

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NICK SPAGNOLO,)	2:12-cv-00184-ECR-RJJ
)	
Plaintiff,)	<u>Order</u>
)	
vs.)	
)	
DR. ADAM LOUSIGNONT,)	
)	
Defendant.)	
)	
)	

I. Background

On February 3, 2012, Plaintiff, proceeding *pro se*, filed a Motion for Leave to Proceeding *in forma pauperis* (#1). The attached Complaint (#1-1) alleges a cause of action arising under 42 U.S.C. § 1983 against Defendant Dr. Adam Lousignont and seeks relief for alleged malpractice in dental care.

II. Discussion

A. Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (#1)

Plaintiff's application indicates that his income from the Social Security Administration for Supplemental Security Income is \$698.00 per month. He lists \$1,600.00 in cash or savings. Because Plaintiff has made the required showing under 28 U.S.C. § 1915 to proceed *in forma pauperis*, the Court will grant Plaintiff's motion (#1).

1 **B. Plaintiff's Complaint (#1-1)**

2 The Court must subject each civil action commenced pursuant to 28
3 U.S.C. § 1915(a) to mandatory screening and order dismissal of any
4 claim it finds "frivolous, malicious, failing to state a claim upon
5 which relief may be granted, or seeking monetary relief from a
6 defendant immune from such relief." 28 U.S.C. § 1915(e)(2)(B); see
7 also Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
8 (holding that 28 U.S.C. § 1915(e) requires the Court to *sue sponte*
9 dismiss an *in forma pauperis* complaint that fails to state a claim).
10 A complaint that lacks any basis for federal subject matter
11 jurisdiction is subject to dismissal pursuant to § 1915(e)(2). Cato
12 v. United States, 70 F.3d 1103, 1106-07 (9th Cir. 1998).

13 The Court must dismiss Plaintiff's Complaint (#1-1) for failure
14 to state a claim. "To sustain an action under section 1983, a
15 plaintiff must show (1) that the conduct complained of was committed
16 by a person acting under color of state law; and (2) that the conduct
17 deprived the plaintiff of a federal constitutional or statutory
18 right." Hydrick v. Hunter, 500 F.3d 978, 987 (9th Cir. 2007)
19 (citation omitted). Plaintiff has not alleged that Defendant is a
20 state actor, nor has Plaintiff alleged a violation of a federal
21 Constitutional or statutory right. Rather, the face of the Complaint
22 (#1-1) reveals that Plaintiff seeks damages for violations of state
23 law, such as negligent dental care, medical malpractice, and/or
24 violation of Nevada's dental regulation statutes. Because Plaintiff
25 has failed to state claim upon which relief may be granted,
26 Plaintiff's Complaint (#1-1) must be dismissed.

III. Conclusion

IT IS, THEREFORE, HEREBY ORDERED THAT Plaintiff's Complaint (#1-
1) is DISMISSED.

The Clerk shall enter judgment accordingly.

DATED: May 24, 2012.


UNITED STATES DISTRICT JUDGE